IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.808 OF 2005

Shri Manohar Khandu Shinde .. ..Appellant
Versus
Seetabai Hatesing Thakare and Ors. ..Respondents

Mr.P.B.Shah for appellant
Mr.P.N.Joshi for respondent Nos.1 to 3

CORAM : P.V.KAKADE, J.

DATE : 28TH SEPTEMBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge Nasik dated 20.12.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge,Junior Division, Satana dated 8.2.2002 decreeing the plaintiff’s suit for partition and separate possession of their share in the suit property and consequential reliefs.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for declaration that the sale deed of the suit property dated 11.3.1997 was not binding on hear share and sought declaration that the plaintiff and defendant nos.2 to 4 have equal share. The plaintiff has also claimed partition to the extent of 1/4th share for herself and defendant nos.2 to 4. She has also claimed the relief of permanent injunction for restraining the defendant no.1 from alienating the suit property. The defendant nos.1 and 2 appeared but failed to file written statement and suit is proceeded against them. The defendant no.3 admitted the suit claim along with defendant no.4. It was the case of the plaintiff that the suit land was ancestral property of her husband. The Defendant no.2 had got recorded her name to the suit property by joining hands with revenue authority and it was alleged that the defendant no.2 had illegally sold out the suit land to the defendant no.1.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff was entitled to decree in part and alienation of the suit property admeasuring 94Rs was held to be not binding on the share of the plaintiff and defendant

nos.3 and 4. It was further declared that the plaintiff and defendant nos.3 and 4 had 1/4th share each in the suit property admeasuring 94 R. It was further directed that the defendant to deliver the possession of 1/4th share of the plaintiff and the defendant nos.3 and 4 each in the suit property within two weeks and defendant no.1 was entitled to retain 1/4th share of the defendant no.2 Thagubai Bhika Mahale by virtue of the said transaction between them. Further the perpetual injunction was granted against the defendant no.1 as per the decree along with other consequential reliefs.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant vehemently urged that when the defendant nos. 3 and 4, who had not joined as plaintiffs, and had admitted the suit claim, need not have been directed to be give possession of the suit property along with plaintiff without any prayer. It was further urged that there was earlier suit being Regular Civil Suit No.179 of 1997 filed by the present plaintiff and Respondent Nos.1 and 3 i.e. defendant nos.3 and 4 against the appellant and Respondent No.4, which was dismissed for default and

therefore, it was necessary for the present defendant nos.3 and 4 either to file separate suit or to join plaintiffs in the suit itself. However, by any stretch of imagination, I fail to understand how the right of defendant nos.3 and 4 would be affected in any manner if they did not join the plaintiffs but preferred to remain as defendant nos.3 and 4, who admitted the claim of the plaintiffs. In any manner, this cannot be a question of law at all. So far as decree for possession of defendant nos.3 and 4 of their share is concerned, it is needless to mention that in a partition suit when the claim of the plaintiff is proved and her share is declared by the Civil Court, it is necessary for the court to determine the shares of remaining parties including the defendants also. In this particular case the plaintiff had also prayed for determination of share of defendant nos.3 and 4 specifically who are admittedly as well as evidently sharers in the suit property and therefore, in my considered view, there was no illegality or irregularity in decreeing the suit with direction that the defendant no.1 shall deliver possession of 1/4th share of the plaintiff and also to defendant nos.3 and 4 each in suit property.

5. In view of this position, I hold that there is no substantial question of law involved in this appeal and as such appeal is devoid of merits and stands dismissed without any order as to costs.